

# TERMS OF TRADE OF PRIVATE COLLECTION LIMITED (PCL)

## INCORPORATION OF TERMS

- 1.1 *Terms of Trade:* These Terms apply in respect of every supply of Goods by PCL to Customer, and are deemed incorporated in each Contract.
- 1.2 *Terms are Paramount:* The Terms are paramount and, to the extent there is any conflict between the Terms and any invoice or other document relating to any Goods (including any document produced by Customer) the Terms will prevail.
- 1.3 *Customer Bound:* Customer will become bound by these Terms as soon as Customer signs or agrees to these Terms, or Customer orders Goods, or PCL supplies Goods to Customer.

## 2. ORDERING PROCEDURES

- 2.1 *Orders:* The following provisions apply to orders for Goods:
- (a) Orders must be placed in accordance with procedures from time to time laid down by PCL.
- (b) Orders shall be deemed accepted by PCL when accepted or confirmed in writing or upon dispatch of the Goods by PCL. Orders for Goods may be accepted by PCL in whole or part. Acceptance of orders is at PCL's sole discretion.
- (c) PCL may cancel or amend any order for Goods which in the opinion of PCL is impractical or uneconomic to supply.
- (d) Once an order has been accepted or confirmed by PCL, it may be changed or cancelled by either party within 14 days of that acceptance, or by the Customer if permitted under any order confirmation as a result of late delivery by PCL, however it may not otherwise be changed or cancelled without the prior written consent of PCL.
- 2.2 *Status of Order:* The placement of an order with PCL constitutes an offer by Customer to trade with PCL and does not constitute acceptance of any offer by PCL. Receipt of an order by PCL from Customer does not constitute acceptance by PCL of that order.

## 3. PRICE AND PAYMENT

- 3.1 *Pricing:* Customer shall pay to PCL in respect of all Goods supplied by PCL to Customer, the Price for those Goods as at the date of delivery of those Goods.
- 3.2 *Payment:* Payment for Goods (including any GST component), and any other charges associated with Goods, is due on the 20th of the month following the month in which those Goods are delivered. Payment shall be made in cleared funds.
- 3.3 *Default Interest:* Interest at 15% shall be payable on any moneys outstanding by Customer to PCL from the date payment is due until the date payment is received by PCL but without prejudice to PCL's other rights and remedies in respect of non-payment or late payment. That interest shall be payable on demand by PCL.

## 4. DELIVERY AND DAMAGE

- 4.1 *Delivery:* The following provisions apply to delivery of Goods:
- (a) Goods shall be deemed to be delivered when delivered to the address provided by the Customer. If Customer fails or refuses to take or accept delivery, then the Goods shall be deemed to have been delivered when PCL was willing and able to deliver them.
- (b) Any quotations of delivery times by PCL are estimates only and not commitments. PCL shall not be bound by such quotations.
- (c) PCL shall not be liable to Customer for non-delivery or delay in delivery.
- 4.2 *Damage:* Any complaints of damage, short delivery, loss in transit or defect must be made to PCL within two weeks of delivery to Customer. PCL will have the right in its discretion to repair or replace the goods in respect of which any complaint as aforesaid is made and proven, or to refund or credit the portion of the Price applicable thereto, but will have no further liability in relation to any damage, short delivery, loss in transit or defect.

## 5. RISK AND SECURITY INTEREST

- 5.1 *Risk:* Risk of any loss, damage or deterioration of or to Goods shall be borne by Customer from the date of delivery of Goods in accordance with clause 4.1(a).
- 5.2 *Security Interest:* Customer grants a security interest to PCL in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods and for any other amounts owing by Customer to PCL from time to time, and for the performance by the Customer of all Customer's other obligations to PCL from time to time, (Customer's indebtedness and obligations). For the purposes of section 36(1)(b) of the Personal Property Securities Act 1999 (PPSA), and to ensure maximum benefit and protection for PCL by virtue of section 36(1)(b)(iii) of the PPSA, Customer confirms and agrees that Customer intends to and does grant to PCL, as security for Customer's indebtedness and obligations, a security interest in all of the Goods and/or any proceeds thereof.
- 5.3 *Customer Cooperation:* Customer shall do anything that PCL reasonably requires to ensure that PCL has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.
- 5.4 *Allocation of Payments:* PCL may allocate amounts received from Customer in any manner PCL determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
- 5.5 *Verification Statement:* Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.
- 5.6 *Customer Acknowledgements:* Customer agrees that nothing in section 114(1)(a), 133 and 134 of the PPSA shall apply to any Contract, or the security under any Contract, and waives Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

## 6. LIABILITY

- 6.1 *Exclusion of Warranties:* No warranties, express or implied, are given as to the life or wear of the goods supplied, nor that they will be suitable for any particular purpose nor for use under any specific conditions, notwithstanding that such purpose or condition may be known or made known to PCL.
- 6.2 *No Liability for Consequential Losses:* PCL shall not be liable for any loss of profits or any consequential, indirect or special damage or loss of any kind suffered by Customer or any employee, agent, affiliate, contractor or officer thereof.
- 6.3 *Limitation of Liability:* The liability of PCL to Customer shall not in aggregate exceed the invoice price of the Goods in respect of which the liability arises.

- 6.4 *Indemnity:* Customer shall indemnify PCL against any liability or cost incurred by PCL as a result of any breach by Customer of any provision of these Terms.

## 7. DEFAULT

- 7.1 *Default:* A default (Default) occurs if the Customer defaults in performance of its obligations under any Contract (including failure to make payment on due date), if any Goods are at risk, or if Customer becomes insolvent, is adjudicated bankrupt or an application is made for its liquidation or a liquidator or receiver is appointed in respect of its assets, or enters into, or is likely to enter into, any composition or arrangement with its creditors, or no longer carries on business or threatens to cease carrying on business.
- 7.2 *Enforcement upon Default:* If a Default occurs, PCL without prejudice to any other rights or remedies, may at its option do any one or more of the following:
- (a) Require all moneys outstanding to be immediately due and payable and enforce the security interest created by clause 5.
- (b) Require security for Customer's obligations to PCL's satisfaction.
- (c) Suspend or terminate all or any Contracts.
- (d) Require Customer to stop selling or otherwise disposing of the Goods.
- (e) Enter upon Customer's premises where the Goods are situated and take possession of and remove the same without being responsible for any damage caused, and resell those Goods and apply the proceeds in satisfaction or reduction of amounts owing by Customer.
- 7.3 *Other Costs:* Customer shall pay all costs incurred by PCL, (including costs on a solicitor/client basis and debt collectors' costs) incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Terms.

## 8. DEFINITIONS

- 8.1 *Defined Terms:* For the purposes of these Terms:
- Contract* means each contract for the supply of Goods by PCL to Customer, which shall include these Terms, any document evidencing or describing, whether by item or kind or otherwise, the Goods, which is produced or put forward by PCL, and the provisions contained in PCL's confirmation of an order (where the Contract arises from written acceptance by PCL of an order by Customer).

*Goods* means all knitwear, clothing, accessories and all other goods or property which, in each case, are supplied by PCL to Customer.

*Price* in respect of Goods at any time means the price specified in the most recent price list produced or published by PCL at that time, or the price confirmed by PCL in relation to any particular Contract as being its price for Goods supplied under that Contract.

- 8.2 *PPSA:* In these Terms, The terms after-acquired property, at risk, inventory, lease, perfected, proceeds, purchase money security interest, rights, security interest and sell have the respective meanings given to them under, or in the context of the PPSA.

## 9. GENERAL

- 9.1 *Electronic Messages:* The Customer hereby expressly consents to receiving commercial electronic messages of any nature from PCL, pursuant to the terms of the Unsolicited Electronic Messages Act 2007.
- 9.2 *Force Majeure:* Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under a Contract if the failure or delay arises directly or indirectly from a cause reasonably beyond that party's control but nothing in this clause shall excuse a party from any obligation to make a payment when due under the Contract.
- 9.3 *Amendment:* PCL may vary these Terms at any time by notice to Customer. Any such variation will take effect from acceptance of the first order for Goods following a notice of the variation being given to Customer. The latest version of these Terms will be posted on PCL's website ([www.privatecollection.co.nz](http://www.privatecollection.co.nz)) from time to time.
- 9.4 *Assignment:* Customer may not assign all or any of its rights or obligations without the prior written consent of PCL.
- 9.5 *Waiver:* The rights, powers, exemptions and remedies of PCL shall remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
- 9.6 *Confidentiality:* To the extent that any confidential information is passed by a party to the other, the other party must keep that information confidential.
- 9.7 *Errors or Omissions:* Clerical errors or omissions, whether in compilation or otherwise in any order, quotation, acknowledgement, invoice or other such documentation, are subject to correction by PCL.
- 9.8 *Privacy Act:* Customer authorises PCL to contact any credit agency, referee or any other source in order to check, exchange or provide information in relation to Customer and Customer authorises each such source to provide to PCL any information about Customer.
- 9.9 *Relationships:* Nothing in the making or performance of a Contract creates the relationship of partnership, joint venture or agent and principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.
- 9.10 *Governing Law:* Each Contract is governed by New Zealand law and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of any Contract.
- 9.11 *UN Convention:* The United Nations Convention on contracts for the international sale of goods does not apply.
- 9.12 *Acknowledgement:* The Customer acknowledges that it has received a copy of these Terms and in particular that each Contract constitutes a security agreement for the purposes of the PPSA, and that PCL may register a financing statement.
- 9.13 *Counterparts/Fax:* These Terms may be executed in any number of counterparts each of which will be deemed an original and all of which together will constitute a single instrument. Facsimile copies will be sufficient evidence that an original of the Terms has been executed.
- 9.14 *Other Rights:* PCL may have additional rights under previous contracts entered into between PCL and the Customer and nothing in these Terms excludes or prejudices the exercise by PCL of those rights.